IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(Crl.).No. 219 of 2007(S)

PETITIONER:

MRS. ANILA PILLAI, AGED 34 YEARS,
W/O. RAJENDRAKUMAR PILLAI, ANUPAMA, KUTANPEROOR,
MANNAR P.O., ALLEPPY, NOW WORKING AT AMBERNATH,
MUMBAI.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY HOME SECRETARY TO THE GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DEPUTY SUPERINTENDENT OF POLICE,
CHENGANNOOR.

3. CIRCLE INSPECTOR OF POLICE,
MANNAR POLICE STATION.

4. S.I. OF POLICE, MANNAR.

5. MR.R. RAJENDRA KUMAR PILLAI,
THEKKEPULIVELIL HOUSE, ORRIPURAM, CHENNITHALA P.O.
MAVELIKKARA.

R1 TO R4 BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN
BY ADV. SRI.T.A.SHAJI

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: THE TRUE COPY OF THE MISCELLANEOUS APPLICATION.

EXT.P2: THE TRUE COPY OF THE LETTER.

EXT.P3: THE TRUE COPY OF THE COMPLAINT.

//TRUE COPY//

P.R.RAMAN & V.K.MOHANAN,JJ

WPCR No.219 of 2007

Dated 23rd October, 2007.

JUDGMENT

Raman, J.

This writ petition is filed for Habeas corpus. Petitioner is the mother of the alleged detenu- Master Anuraj, aged 5 years. In the writ petition, it is averred that the petitioner and the 5th respondent got married at Mumbai and they were living together as husband and wife. Subsequently, the 5th respondent is left without any job. The marital relationship got strained, however it is not necessary to go into the details of the reasons alleged, for the limited purpose of disposing of this writ petition, suffice to say that the child was brought by the 5th respondent from Mumbai. A police complaint was made before the Ambernath police station, a petition before the family court Mumbai, and another petition as 43/2007 before the Additional District Judge, Kalyan. It is stated that in spite of notice issued by the Family Court, 5th respondent did not appear. But according to 5th respondent, he did not receive summons. This Habeas corpus writ petition has been filed since the child has been brought from the jurisdiction of the family court, Mumbai without the knowledge of the mother. On receiving notice, 5th respondent appeared. Child was also produced. Considerably for a long time, we interacted with the parties for an amicable settlement. A solution to the dispute between the parties could not

be reached. The short question that arises for consideration is as to how and with whom the child should be entrusted as an interim custody having regard to the welfare of the child. In this regard, we asked the mother of the 5th respondent who is also present. We have interacted with her also. Petitioner is residing at Mumbai along with her parents. Petitioner is ready to look after the child and actually she wanted the child to her custody. But the 5th respondent admitted that the child is admitted in Divine Retreat Centre. But we consider that the child needs love and affection of the parents and their care. Child is not an orphan. The mother ensures that she will look after the child. However, the mother of the 5th respondent is prepared to look after the child. Hence we are of opinion that as a temporary measure, the child can be entrusted with the mother of the 5th respondent namely Smt.M.K.Saradamma, Thekkepulivelil house, Orripuram, Chennithala P.O., Mavelikkara who is impleaded for this purpose for issuing appropriate direction in this behalf.

2. Accordingly, we entrust the interim custody of the child with Smt.Saradamma. The petitioner will be free to visit the child at any time. The father of the child is also entitled to visit the child. In case the petitioner wants the child to be brought to the mother's sister of the petitioner namely, Smt.Suseeladevi, who is also residing very near, arrangements may be made by Smt.Saradamma so as to enable the petitioner to visit the child in the house of Suseeladevi. Saradamma will

arrange for admitting the child to the school. We make it clear that 5th respondent shall not remove the child from the custody of Smt.Saradamma except upon a court's order. The interim arrangement which we have made as above, is subject to any orders that may be passed by the family court. The Family court is free to take an independent decision untammelled by any of the observation herein contained or even this interim arrangement.

P.R.Raman, Judge.

V.K.Mohanan, Judge.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: